

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

CHARLES DOUGLAS RABY	§	
VS.	§	CIVIL ACTION NO. 9:13-CV-120
PAUL TOLLY, <i>et al.</i> ,	§	

ORDER ADOPTING THE MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, Charles Douglas Raby, a death row inmate confined at the Polunsky Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, brings this civil rights action pursuant to 42 U.S.C. § 1983 against defendants Paul Tolly, Terry Valentine, Donald Muniz, Suvanna Harris, Virgil McMullen, Richard Alford and Aaron Flloyd.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends defendants' motion for summary judgment as to plaintiff's claims for excessive use of force and failure to protect should be denied, defendants' motion for summary judgment on the remaining claims should be granted, plaintiff's motion for spoliation instruction, upon reconsideration, should be set for hearing at pre-trial, and plaintiff's claims for conspiracy and denial of access to courts should be denied for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. No objections to the Report and Recommendation of United States Magistrate Judge have been filed to date.

ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A partial judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

**So Ordered and Signed**

Jul 10, 2018

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

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Ron Clark, United States District Judge